

**CITY OF DELAWARE CITY
BOARD OF ADJUSTMENT
NOTICE OF DECISION**

APPLICANT: Preston S. Carden, Jr. or assigns
604 Front Street
Delaware City, DE 19706

NCC TAX PARCEL NO. 22-007.00-185
PUBLIC HEARING DATE: March 30, 2006
DATE OF DECISION: April 6, 2006

REQUESTED: Applicant requested a special exception to allow for three row houses as well as lot frontage variances for proposed lots 1 & 3 from 50' to 34' and for proposed lot 2 from 50' to 20'. Applicant further requested a front set back variance for proposed parcel 4 from 15' to 0'; and lot area variances for lot 1 (from 5,000' to 3400'), lot 2 (from 5000' to 2000'), lot 3 (from 5000' to 4200'), and lot 4 (from 500' to 1147') for the property located at 604 Front Street (NCC Tax Parcel No. 22-007.00-115) and presently zoned C-2, but subject to a pending application to down zone same to C-1.

The Board of Adjustment may grant a special exception to permit row houses in an C-1 Zone pursuant to Zoning Code §46-121 (c)(8) where, after public hearing, it is determined: 1. that a proposed use on a specific lot or parcel is reasonably necessary for the convenience and /or welfare of the public; and 2. that the proposed use on the lot or parcel involved is not detrimental or injurious to the neighborhood or the City. The Board may condition any such grant as the Board deems necessary to protect the health, safety and welfare of the neighborhood and the City. The Board of Adjustment may grant a variance from the dimensional requirements of the City of Delaware City Zoning Code where it finds the applicant or property owner is experiencing exceptional practical difficulty in complying with the specific standards of the Zoning Code applicable to the subject property and where substantial justice can be done without substantial detriment to the public good and without substantially impairing the intend and purpose of any zoning ordinance, code, regulation or map.

The subject property was the subject of a prior Board of Adjustment application by the current legal owner, Donna Brady, resulting in a decision dated January 5, 2005. That application was made in conjunction with a application to redone the premises from C-1 to C-2 to permit its use as a contractor's office with voluntary deed restrictions running in favor of the City. The Brady use was never implemented and she has contracted to sell the property to the current applicant, Preston S. Carden, Jr. or assigns. Mr. Carden proposes to down zone the property back to C-1, seek relief from Mayor and Council from the voluntary deed restrictions recorded by Ms. Brady, and then subdivide the property into 4 lots. Three of the lots are slated for construction of row homes while the fourth lot will be reserved for an existing historic garage structure. §46-121

(c) (8) grants the Board of Adjustment original jurisdiction to grant a special exception of a row house use in a C-1 zone.

The testimony and evidence indicated that the subject property is currently composed of a rectangular, .25 acre lot, more or less, having dimensions of approximately 142.21 feet of frontage along Front Street and approximately 100 feet deep. It is improved with a garage in poor condition but having historical significance. The subject property is in the historic commercial district of the City. The applicant has applied to the City for a down zoning of the subject property to the C-1 zoning classification, thus restoring its prior zoning, and such application is pending decision by Mayor and Council.

The applicant submitted a plot plan indicating that the applicant intends to subdivide the property into four parcels, three of which will be used for the erection of row houses and the last for the historic garage structure. C-1 zoning requires 50' of lot frontage on a public road. Lot nos. 1, 2 and 3 have proposed lot frontages of 34', 20' and 34' respectively. Thus, lot frontage variances are requested for each. C-1 zoning further requires 5000 sq. ft. of lot area. Lot nos. 1, 2 and 3 have proposed lot areas of 3400 sq. ft, 2000 sq. ft and 4200 sq. ft. respectively. The City Manager reported that no C-1 zoned properties in the City have a full 50' of frontage. He further pointed out that the proposed use is a residential one in keeping with surrounding area and that the lot frontages and lot areas of the proposed lots are compatible with surrounding properties. In fact, the applicant's proposed uses are more compatible with the neighborhood than the C-2 permitted contractor's office use that is currently permissible for this property. The City thus supports the application subject to rezoning of the property back to the C-1 classification and subdivision of the property in substantial conformance with the submitted plan. The City Manager further reported that the historic garage on proposed Lot 4 would remain where it has always been with a zero setback from the public right of way of Front Street. The only reason a variance would be needed here is due to the subdivision which creates a new, smaller Lot 4 on which the garage would be sited.

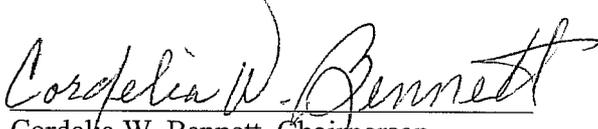
No members of the public appeared to express concerns about the special exception or variance requests.

The Board votes to grant the requested special exception for row houses and the dimensional variances subject to the rezoning of the property to the C-1 classification and subdivision approval in accordance with the plot plan presented to the Board. The Board found that the proposed row house use is reasonably necessary for the convenience and /or welfare of the public and that the proposed row house use on the proposed lots involved is not detrimental or injurious to the neighborhood or the City. The Board further found that the applicant is experiencing exceptional practical difficulty with respect to the dimensional variances for the reasons cited by the applicant and the City Manager. The dimensional variances are consistent with other properties in the area and is generally compatible with surrounding property uses and other uses in the Historic District. Moreover, the harm to the applicant and the community as a whole if the variances were denied would be greater than the probable effect on neighboring properties if the variances are granted. The granting of the variances will not cause substantial detriment to the public good, nor will it substantially impair the intent and purpose of the Zoning

Code. The grant of the variances is conditioned upon the razoring of the property to C-1 and the subdivision of the property in substantial conformance to the plot plan submitted to the Board by the applicant.

Vote: 3-0 (Grant: Bennett and Stewart. Loco abstained and did not participate in the hearing due to conflict of interest)

BOARD OF ADJUSTMENT OF
THE CITY OF DELAWARE CITY


Cordelia W. Bennett, Chairperson

NOTE: This special exception and variance decision is neither a building permit nor a Certificate of Occupancy. Appropriate permits must be obtained from the applicable governmental agencies prior to construction or establishment of any use on the property. This decision should be kept in a safe place with the property deed. This decision may be appealed to the Superior Court by any person aggrieved by it within 30 days of its filing in the Office of the Board of Adjustment.